

January 6, 2015



Talbot County Planning Commission
Final Decision Summary

Wednesday, October 1, 2014 at 9:00 a.m.

Bradley Meeting Room

11 N. Washington Street, Easton, Maryland

Attendance:

Commission Members:

Thomas Hughes
William Boicourt
Michael Sullivan
Paul Spies
Jack Fischer

Staff:

Mary Kay Verdery, Interim Planning Officer
Mike Pullen, County Attorney
Tony Kupersmith, Assistant County Attorney
Elisa Deflaux, Environmental Planner
Martin Sokolich, Long Range Planner
Mike Mertaugh, Assistant County Engineer
Carole Sellman, Recording Secretary

1. Call to Order—Commissioner Hughes called the meeting to order at 9:00 a.m.

2. Decision Summary Review—September 3, 2014—The Commission noted the following corrections to the draft decision summary:

- a. Line 196, change to read: "As it stands right now we do not require that the road be widened."
- b. Line 278, change to read: "He would be more comfortable with Planning Commission review for larger projects."

Commissioner Boicourt moved to approve the draft Planning Commission Decision Summary for September 3, 2014, as amended; Commissioner Sullivan seconded the motion. The motion carried unanimously.

3. Old Business—None.

4. New Business

- a. Still Waters Farm, LLC #L1208—Miles River Road, Easton, MD 21601 (map 24, grid 19, parcel 39, 43, 44 and 210, zoned Rural Conservation/Western Rural Conservation), Sean Callahan, Lane Engineering, LLC, Agent.

Ms. Verdery presented the staff report and history for Still Waters Farm, LLC final major revision plat and lot size waiver for Lot 5.

Staff recommendations include:

- 54 1. Address the September 10, 2014 Technical Advisory Committee comments of
55 Planning and Permits, Department of Public Works, Environmental Health
56 Department, Talbot Soil Conservation District, the Environmental Planner and
57 the Critical Area Commission prior to final plat submittal.
58 2. The applicant shall apply for a variance for proposed private road impacts to
59 the stream and wetland buffers in the critical area.
60

61 Bruce Armistead of Armistead Griswold Lee & Rust, and Sean Callahan of Lane
62 Engineering, LLC, Chuck Benson of Benson & Mangold, all representing the
63 applicant. Mr. Armistead stated they are close to wrapping up this project. They
64 need to go to the Board of Appeals for the buffer/wetlands disturbance. The last
65 of the required state and federal permits arrived on Monday. They filed with the
66 Board of Appeals on Monday and are scheduled for November 17, 2014.
67

68 Commissioner Hughes stated there are some cases in Circuit Court regarding
69 wetlands and asked if they would affect this case. Mr. Armistead stated he does
70 not know if there is a ruling on that case, but he suspects once the ruling comes
71 back they would have discussions with staff.
72

73 Commissioner Boicourt asked about the Intersection of Riverslie Drive and the
74 existing gravel driveway. Public Works wants the driveway and new Riverslie
75 Drive, to the extent possible, to be a right angle, slow down and turn in. They
76 have been working with Public Works to address that. Mr. Mertaugh stated this
77 would also be addressed with a road maintenance agreement to be recorded
78 among the land records.
79

80 Commissioner Hughes asked for public comment, there was none.
81

82 Commissioner Spies moved to grant lot size waiver for Still Waters Farm, LLC,
83 Lot 5, with staff conditions; Commissioner Sullivan seconded. The motion was
84 unanimous.
85

86 Commissioner Boicourt moved to grant final plat approval for Still Waters Farm
87 LLC, Miles River Road, Easton, Maryland, with staff conditions from the
88 September 10, 2014 Technical Advisory Committee comments being complied
89 with; Commissioner Sullivan seconded. The motion was unanimous.
90

- 91 b. A Resolution to amend the Talbot County comprehensive water and sewer plan to
92 reclassify and remap certain properties located in the Talbot Commerce Park
93 adjacent to the Town of Easton, Maryland (the "properties") from the current
94 classification of "unprogrammed" to "W-1" and "S-1" immediate priority status,
95 to make the properties eligible for water and sewer service from the Easton water
96 and wastewater systems, and to amend Table 7 and Table 16 to authorize capital
97 projects to extend water and sewer service from the Easton water and wastewater
98 systems to the properties.
99

Ray Clarke, County Engineer stated they have been working with the Town of Easton for the past two or three years to allocate Bay Restoration Funds to assist with the sewer extension in the Talbot Commerce Park. About a year ago the Town initiated efforts in extending sewer and water into the Talbot Commerce Park. In the last ninety to one hundred twenty days the Town has initiated efforts to annex the Talbot Commerce Park. We received the Town's request to amend the comprehensive water and sewer plan, taking the Talbot Commerce Park from an unprogrammed status to an S1. We are seeking the Planning Commission motion and approval that the proposed resolution to amend the comprehensive water and sewer plan is consistent with the Talbot County Comprehensive Plan.

Commissioner Hughes asked if all of Talbot Commerce Park is in the priority funding area. Mr. Clarke stated that once it is annexed it will be. Commissioner Hughes asked how much is in the critical area. Ms. Verdery stated Lot 20, and once the updated zoning maps are in effect, a portion of Lots 16 and 17.

Lynn Thomas, Town of Easton Planner, explained the Town was under the assumption they could assign Business Commercial (BC) zoning classification to all of the industrial park, but it was brought to their attention by Critical Area Staff they could not apply a base industrial zoning classification in an Resource Conservation Area (RCA) district. They understand that to the extent there is any development, they would have to enter into joint growth allocation process with the County.

Commissioner Hughes stated the Talbot County Comprehensive Plan policy is that large scale retail is not appropriate in industrial parks. What concerns him is that there are a number of uses permitted in I1 and BC town zones that are not permitted in our current zoning and more importantly the town has a Planned Unit Development (PUD) provision in its ordinance whereby someone can completely get around the table of uses in the Easton zoning for Industrial 1 (I1) and BC by applying a PUD and can do any sort of major retail development on the lots in this industrial park. The Easton Code says:

"Section 801(C)(2)

b. Where the PUD District is established in any "C" District, all permitted and special exception commercial and residential uses may be permitted. Major Retail and Shopping Centers shall meet the supplemental standards set out in section 1008. The Town Council may, in granting a PUD application, permit specific industrial uses which shall be limited to those permitted within the I-1 District.

c. Where the PUD District is established in any "I" District, all commercial or industrial uses may be permitted."

Commissioner Hughes is concerned that these 5 unimproved lots, three of which abut one another and total over twenty-seven acres, could quickly morph into major retail.

Mr. Thomas states that at the staff level, they share that concern. He thinks it would also be a planning commission level concern at the town. There are some safeguards which prohibit new shopping centers in terms of their locations such that they limited to either occurring within existing shopping centers or land adjacent to existing shopping centers. He would never suggest that it would not be possible, but it would require further amendments to that language to permit a retail shopping center.

Commissioner Hughes stated the very recent example of the land behind Target which is now to have a BJ's, Dicks Sporting Goods and a Harris Teeter and other commercial buildings to be named later. That was all zoned industrial and now it is major retail. He sees virtually no impediment why it would not happen in Talbot Commerce Park. Mr. Thomas stated the significant difference there is that is adjacent to the Target shopping center. That circumstance does not exist in the Talbot Commerce Park.

Commissioner Hughes stated when the Target project was originally approved it was all zoned industrial on the back side, with the intent that it was supposed to be a mixed use development with housing, some retail and places to work. No housing has materialized. The only industrial place in there is Quality Health Services and everything else has morphed into major retail. He doesn't have much confidence it won't happen in Talbot Commerce Park. A lot of money was spent on the Sage Report which stated there was a great shortage of industrial land in the County, especially with enough utilities and the way to improve our local economy is not to continue to approve more retail franchises but to get good businesses. Retail and food services will not provide the level of tax revenues nor the professional and artisan services needed for long term growth and stability. He stated the goal of this Commission should be to preserve what little industrial zoned land there is.

Commissioner Boicourt agreed with Commissioner Hughes concerns. This is an industrial park which is partially built out so it limits what can be done regarding major retail. Finally, we are going to get this on sewer. Commissioner Spies asked how many industrial lots in the County are on water and sewer. It was stated there were none. Commissioner Spies stated he had a larger concern that for economic growth and County growth we should have lots in the industrial sector on water and sewer. For him to move forward he feels we need to ensure the use remains industrial.

Commissioner Fischer shared the view that we need the land for industrial use. Commissioner Sullivan asked if there is a way to do something to ensure this stays industrial. Commissioner Boicourt does not feel we have any way to do that

191 except with a 5 year hold and with regard to the sewer he is not willing to go that
192 far.

193
194 Commissioner Hughes is in favor of Talbot Commerce Park being on water and
195 sewer and being an industrial park, but has great concerns about it morphing into
196 retail. The Commission has to make a finding of fact that the water and sewer
197 amendment is consistent with our Comprehensive Plan. This should have been on
198 water and sewer from day one. He is worried about using water and sewer plan as
199 a hammer to keep it from becoming major retail. The Commission also has to
200 review the request for a 5 year hold. If we were to approve the water and sewer
201 amendment should we recommend to the Council that they keep the 5 year hold
202 until we get some type of assurance from the Town that a PUD won't be dropped
203 on any of the lots in this industrial park and we end up with major retail in there.
204 Commissioner Boicourt stated he was not willing to go that far. He felt Glebe
205 Road is not becoming a major arterial. The Industrial Park traffic, at present, is
206 minimal. His feeling is that a build out of that industrial park will only increase
207 traffic slightly.

208
209 Commissioner Spies asked if there has been any feedback from the current
210 property owners. Mr. Thomas stated there has been a lot of involvement. There is
211 the annexation for which they are before the Commission. The Town is seeking
212 grant funding to defray the cost of extending water and sewer but that will not
213 cover the entire cost. In order to recoup those costs the Town is simultaneously
214 proposing a special taxing district wherein the property owners can repay the
215 Town over a ten year period. There is a 51% threshold of participating property
216 owners for the annexation, but there is a two-thirds requirement for the special tax
217 district. They have received both of those, though not universal support. There is a
218 handful of opposition. Commissioner Spies stated it would have been nice to have
219 heard from some of the owners of the property. The goal is to create properties
220 that are enticing to bring business—buildings, roads, easy access in and out, not
221 just throwing up some industrial business zones. Commissioner Boicourt stated
222 we are also the trying to bring the right kind of business. Commissioner Hughes
223 stated he would be all for this if he was sure the table of uses under BC would be
224 adhered to, if that PUD gorilla sitting over in the corner were not involved with
225 this. He questioned if there was any possibility that he might be able to induce the
226 Planning Commission or Town Council to eliminate the PUD overlay on some of
227 their zones, i.e. business commercial. Mr. Thomas stated it was a possibility. He
228 stated there was interest in revisiting the PUD for a number of reasons. As part of
229 the comprehensive zoning update there was opportunity to discuss that. Maybe an
230 option would be limiting if not prohibiting applying for a PUD. Mr. Thomas
231 stated the Town's legal counsel could not be here today, and he would defer to
232 her, but maybe an option would be that as part of the documents the council is
233 about to approve there would be conditions outlined that would limit, if not
234 prohibit the ability to apply for a PUD.

Commissioner Boicourt asked Mr. Pullen for input. Mr. Pullen stated his initial reaction is it is probably not feasible. The state law creates the 5 year hold and it creates the criteria by which the hold is to be evaluated. It does not create the opportunity for the County to insert conditions or restrictions on the exercise or waiver of that. The property owners and Town are fully free to engage in discussions and reach agreements that are binding for rezoning. But the 5 year hold comes from state law. For the County to try to insert control over subsequent zoning decisions post annexation creates problems jurisdictionally. Commissioner Boicourt asked if the 5 year hold was a hard number, and if the Town said they were not going to allow PUDs can the County then dismiss the 5 year hold.

Ryan Showalter appeared on behalf of the owners of Lot 16 and Lot 20. He intends to apply for growth allocation to clean up the critical area boundary. The Town's actions at Waterside Village have been entirely consistent with the Town's comprehensive plan. The land behind Target was zoned I1, but Towns Comprehensive Plan from 2010 was different than zoning map. The Comprehensive Plan for Talbot Commerce Park designates the future land use as industrial. The implementation chapter created a designation for all the then unimproved land as a mixed use. There was a paragraph that calls out the Waterside Village area as one of the development areas likely to be developed including grocer, restaurant, and retail. The zoning wasn't changed to reflect that but it is important to note that the approvals for the 60-70 apartments, one of the largest office buildings in the County and some additional retail are very consistent with the text of the plan and the future land use map. Talbot Commerce Park has grown over the years but it is a fallacy to think any significant industrial development can occur on septic. He strongly encourages the Commission to move this forward. He has not researched the 5 year hold concept, but feels the 5 year hold is a 5 year term.

Commissioner Spies asked Mr. Pullen if we gave a waiver to the 5 year hold that there would still be basically a five year hold consistent with the Comprehensive Plan in place? Mr. Pullen stated if we waived the 5 year rule now and 3 years from now the Town substantially changed to a different zone the opportunity to exercise that hold would exist for a period of 5 years from the date of the original decision.

Mr. Showalter stated that in Section 1008.2, subsection a, subsection 15, lower case n, the Town Zoning Ordinance defines major retail as anything over 65,000 square feet, so subsection 15 is the major retail supplemental use standards, and subsection n deals with maximum size, and subsection n says,

"Section 1008.2, subsection 15.n

- i. No structure shall exceed 65,000 square feet in gross floor area. This provision shall not apply for retail stores within or adjacent to shopping centers which were approved prior (Aug. 25, 2004, including*

282 *projects which involve the expansion of individual stores within an*
283 *existing shopping center; or the redevelopment of an existing shopping*
284 *center; or the redevelopment of an existing shopping center; or the*
285 *expansion of an existing center onto an abutting site or an adjacent*
286 *site; or the construction of a new retail store on a site adjacent to an*
287 *existing shopping center.”*
288

289 Mr. Showalter said this deal was pieced together with Bay Restoration Funds and
290 a one million dollar grant from Community Block Development Grant (CBDG).
291 If this does not happen and the grant is lost it will change the cost to every land
292 owner and change their willingness to proceed and the cost to each to connect.
293 We need to keep this moving while the funds are available.
294

295 Commission Hughes asked for public comment.
296

297 Commissioner Boicourt moved to recommend to the County Council approval of
298 the Resolution to amend the Talbot County comprehensive water and sewer plan
299 to reclassify and remap certain properties located in the Talbot Commerce Park
300 adjacent to the Town of Easton, Maryland (the “Properties”) from the current
301 classification of “Unprogrammed” to “W-1” and “S-1” immediate priority status,
302 to make the properties eligible for water and sewer service from the Easton water
303 and wastewater systems, and to amend Table 7 and Table 16 to authorize capital
304 projects to extend water and sewer service from the Easton water and wastewater
305 systems to the properties, this is consistent with our Comprehensive Plan remains
306 industrial, and it helps with TMDLs; Commissioner Fischer seconded. The
307 motion carried unanimously.
308

309 c. Proposed Talbot Commerce Park Annexation Zoning Waiver Request—(map 25,
310 parcel 46.
311

312 Ms. Verdery wanted to make clear that the Talbot Commerce Park is only asking
313 for the BC zoning, they are not asking for the industrial or I zone. The County LI
314 zone permits a minimum lot size of 1 acre and a maximum lot coverage of 25
315 percent and the BC zone permits a minimum lot size of 40,000 square feet and a
316 maximum lot coverage of 50 percent for buildings.
317

318 Commissioner Boicourt questioned that with the additional lot coverage would
319 they still not have to comply with MDE stormwater standards and still add
320 additional stormwater standards. Ms. Verdery concurred.
321

322 Commissioner Spies recommended to the County Council for the annexation of
323 Talbot Commerce Park to waive the 5 year hold on the zoning change and retain
324 the right to revisit if there is a substantial zoning change in that five year period,
325 and that the annexation is consistent with the Comprehensive Plan; Commissioner
326 Sullivan seconded. The motion carried unanimously.
327

328 **5. Discussions Items—None.**

330 **6. Staff Matters**

332 a. Update on Solar Wind Farm

333
334 Ray Clarke reviewed the data from the renewable energy project for 2012, 2013,
335 and 2014. Talbot County through MDE received grant funding in the amount of
336 \$3.8 Million to pursue a renewable energy demonstration project. That project
337 consisted of 3 Northwind 100 wind turbines and a 300 KW solar array. The
338 electrical and renewable energy items were bid out. Easton Utilities is purchasing
339 the solar renewable energy credits and the renewable energy credits for the wind.
340 We receive \$225 per solar renewable energy credit (rec) and \$0.60 per wind rec.
341 Through Old Dominion Electric Cooperative we signed an agreement with Old
342 Dominion where we receive \$46.00 per megawatt hour.

343
344 They have had people stop in to see the wind turbines and they have done tours of
345 the wind turbine site. They did a tour with Maryland Association of Counties
346 (MACo). As to the question of noise there was no increase in ambient noise levels
347 and we have received no complaints from neighboring properties. There have
348 been no bird strikes, bat strikes, or geese strikes. There is a 4 foot fence around
349 the solar array and there has been no impact from wildlife, no wildlife has gotten
350 into the area.

351
352 We pull off some of the power for our facilities, also we pull the data at the end of
353 the month and Choptank pulls their data at the first of the month. The solar panels
354 are producing twice as much as the wind turbines. We get renewable energy
355 credits for the wind turbine. The maintenance costs are about \$350 per turbine,
356 per year. Solar is more economical and we will move toward those more in the
357 future. Mowing has been a maintenance factor but not a problem. The facility has
358 not been damaged by hail, ice has not been an issue or snow. One wind turbine
359 standing idle was hit by lightning. We will try to develop some information on the
360 Public Works web page.

361
362 There were some unforeseen benefits, last year the County Council adopted two
363 energy policies which positioned the County for the Maryland Smart Energy
364 Communities, with that the bio-soils facilities actually produces 21.1% of the
365 electricity that the County government uses. We met the policy goal for the
366 Maryland Smart Energy Communities. That allowed the County to shift the
367 program funds to be used specifically for vehicles to achieve 20% of petroleum
368 consumption. We purchased 3 Toyota Prius smart cars and hope to get the same
369 funding this December or January and put in propane refueling station at the
370 sanitary district. We hope to buy a few new trucks and convert some existing
371 trucks to propane. Propane is seen as a green fuel. If we convert 7 trucks to
372 propane we would meet our 20% transportation fuel consumption goal by 2019.
373 We did not expect the revenues to be as high \$125,000-130,000 per year with the

374 renewable energy facility. We currently have a cash reserve of \$273,000 in the
375 facility. We are currently looking at improving that facility.

376
377 Commissioner Boicourt questioned if this project makes economic sense. Mr.
378 Clarke stated it has given us information as it relates to wind turbines and revenue
379 from the solar panels. This facility assisted in the state getting additional
380 American Recovery and Reinvestment Act (ARRA) funds. Commissioner
381 Boicourt stated this was grants rather than electricity at market costs. Mr. Clarke
382 stated that the way the markets are set up we can only sell to those who are
383 willing to pay. The solar recs are sold for 22.5 cents per kilowatt hour, whereas
384 the wind turbines are less than a penny per kilowatt hour.

385
386 Commissioner Spies asked if it was possible to transfer the kilowatt hours
387 generated to another County facility rather than sell it back on the grid. Mr.
388 Clarke said it was possible but this would have to be reviewed with Choptank to
389 see if the virtual metering would allow this. If it were possible to utilize the
390 electricity from the Bio-Solids Facility to off-set the electricity at the St. Michaels
391 waste water treatment plant we would get more money for the electricity. This is
392 something we can look into.

393
394 b. Monaco Property Sewer Extension—County Council Resolution 164

395
396 Mr. Clarke stated the Monaco resolution was from 2009 but was not submitted to
397 the state at that time. It was submitted on June 16, 2014. The Maryland
398 Department of Planning came back to the Maryland Department of the
399 Environment and said that the Resolution should not be adopted because it was
400 outside the priority funding area. The County does have the opportunity to appeal
401 that decision. The extension of sewer to the Monaco property does not use any
402 state funds, it was completed with EPA funds as well as developer funds. We
403 have attempted to secure Bay Restoration Funds from MDP but because the
404 Region V wastewater treatment plant is a secondary wastewater treatment plant
405 and has not been updated with ENR or BNR capabilities we are not allowed to
406 utilize Bay Restoration Funds for any sewer extensions. We are trying to work
407 with developers to put lines in out there. This has been part of our TMDL as well
408 as well as watershed implementation strategy.

409
410 Mr. Pullen stated that this matter has only recently come back to the County and
411 the County may appeal through MDP.

412
413 c. Higgins Project

414
415 Ms. Verdery stated Staff has reviewed the Higgins project. The question was what
416 was the approval by the Planning Commission in regard to the roof feature for the
417 front porch portion. We looked carefully at the recordings. The recordings
418 indicated there was a very, very lengthy discussion about the front of the building.
419 The discussion was that the ultimate discussion appeared to be between a pitched

420 roof and pitched façade. It was left to the staff to review the construction plans.
421 What was actually put in the final notice to proceed to Mr. Higgins was a
422 decorative façade. The Staff does not have the authority to undo the conditions of
423 the Planning Commission. The question is, will we have to go back to Mr.
424 Higgins and say although we approved this permit in this fashion and
425 configuration, it has to be amended to show a pitched façade. Or he will have to
426 come back to the Commission for a recommendation to approve the decorative
427 façade constructed.

428
429 Commissioner Spies stated he thought the front of the building was to be a plain
430 front with decorative landscaping screening. Ms. Verdery stated he has a
431 landscaping plan approved for the front of the building. Since Staff cannot
432 override the Commission's decision for pitched roof or pitched façade and what
433 was presented was a decorative façade, is it your desire that he do one or the other
434 of those two? Commissioner Hughes stated that was his recollection that it was
435 not needed to be a full pitched roof, just a pitched façade that would go back as
436 far as the block house. Mr. Pullen stated that needs to be spelled out for the
437 record.

438
439 Ms. Verdery stated in addition Mr. Higgins has lighting on the structure which
440 was not on the original site plan. The site plan specifically stated there would be
441 no electricity. Commissioner Hughes remembered there was testimony from the
442 neighbors who did not want giant lights late through the night and we stated there
443 would not be. Ms. Verdery stated that in order to have electricity the site plan
444 would have to be amended. Commissioner Hughes stated we told the neighbors
445 there would be no all night light. If there is light that encourages people to come
446 late into the night.

447
448 Ms. Verdery stated that lighting and screening issues are all part of the site plan
449 process. If he did not show them on the plan and want to change them he has to
450 come back for approval. If it is something minor we can make sure it meets our
451 lighting standards. We would look at it and make sure it meets the code standards.

452
453 Commissioner Hughes stated you don't want something on a pole that shines onto
454 the neighbors, if you can have something that is confined to the site that would
455 work. We told the neighbors there would not be any light shining out there. Also
456 could they have motion sensitive lights, if someone came to open their door the
457 light would come on and when they left it would go out. Commissioner Spies
458 stated if the site plan said no electricity it should stay that way. Commissioner
459 Boicourt stated after consideration sticking with what we said, he said no electric,
460 so we should keep no electric.

461
462 Commissioner Fischer asked what is the consequence of someone violating the
463 terms of their site plan. Ms. Verdery stated that our first priority is to have them
464 come into compliance. If that is not possible then there are penalties.
465

Ms. Verdery asked if the Commission would like to appoint one of the Commissioners to review any revised plans. It was determined that Commissioner Boicourt and Commissioner Sullivan will review any changed plans.

7. WorkSessions—Comprehensive Plan—Minutes of the work session are provided under separate cover.

8. Commission Matters—None.

9. Adjournment—Commissioner Hughes adjourned the Planning Commission meeting at 11:22 a.m.

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